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Digest of United Nations Sales Convention case law: interpretation of texts

Uniform interpretation of UNCITRAL texts: sample digest of case law on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

Note by the Secretariat

1. In 1966, when the General Assembly established the United Nations Commission on International Trade Law and gave it the mandate to promote the progressive harmonization and unification of the law of international trade, it also stated that the Commission was to do so, inter alia, by promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade and by collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of international trade.[1]

2. At its twenty-first session, in 1988, the Commission considered the need and means for collecting and disseminating court decisions and arbitral awards relating to legal texts emanating from its work, noting that information on the application and interpretation of the international text would help to further the desired uniformity in application and would be of general informational use to judges, arbitrators, lawyers and parties to business transactions.[2] In deciding to establish the case reporting system, the Commission also considered the desirability of establishing an editorial board, which, amongst other things, could undertake a

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[1] General Assembly resolution 2205 (XXI), sect. II, paras. 8 (d) and (e); UNCITRAL Yearbook, vol. I, 1968-1970, part one, II, E.

[2] *Official Records of the General Assembly, Forty-third Session, Supplement No. 17* (A/43/17); UNCITRAL Yearbook, vol. XIX, 1988, part one, para. 99.

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comparative analysis of the collected decisions and report to the Commission on the state of application of the legal texts. Those reports could evidence the existence of uniformity or divergence in the interpretation of individual provisions of the legal texts, as well as gaps in the texts that might come to light in actual court practice. The Commission decided not to establish the board at that time, but to reconsider the proposal in the light of experience gathered in the collection of decisions and the dissemination of information under the CLOUT system.[3]

3. It is submitted that it would be appropriate for the Commission to reconsider the question of how it should contribute to the uniform interpretation of the texts resulting from its work. Such reconsideration is timely because, since the establishment of the CLOUT system, some 400 cases have been reported, including more than 250 on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). In the light of the fact that divergences in the interpretation of the Convention have been noted, it has been repeatedly suggested by users of that material that appropriate advice and guidance would be useful to foster a more uniform interpretation of the Convention. The preparation of an analytical digest of court and arbitration cases, identifying trends in interpretation, would be one way of providing such advice and guidance. The digest could be prepared for the Commission by the Secretariat in consultation with experts from different regions to ensure that it is as accurate and balanced a reflection of the cases on the Convention as possible. In preparing the digest, one possible way may be simply to note diverging case law for information purposes; alternatively, guidance as to the interpretation of the Convention may be provided, based in particular on the legislative history of the provision and the reasons underlying it.

4. The present document contains summaries of case law on articles 6 and 78 of the Convention and is intended to offer to the Commission an example of how court and arbitral decisions might be presented with a view to fostering uniform interpretation. The Commission may wish to consider whether the Secretariat, in consultation with experts from the different regions, should prepare a complete digest of cases reported on the various articles of the Convention. If so, the Commission may wish to consider whether the approach taken in preparing the sample digest presented below, including the style of presentation and the level of detail, is appropriate.

5. Reasons for which the Commission may wish to take steps to foster uniform interpretation of the Convention apply similarly to the UNCITRAL Model Law on International Commercial Arbitration (1985). With respect to the Model Law, some 120 cases have been reported, with some unsettled or divergent trends noted. The provisions that have most frequently been interpreted by reported court decisions include those regarding the scope of application of the Model Law (art. 1), the extent of court intervention (art. 5), the definition and form of the arbitration agreement (art. 7), the referral of the parties to arbitration by the court before which an action has been brought (art. 8), the arbitration agreement and interim measures of protection granted by a court (art. 9), the appointment of arbitrators by the court (art. 11), the competence of the arbitral tribunal to rule on its jurisdiction (art. 16), correction and interpretation of the award (art. 33), the recourse against the award (art. 34) and the recognition and enforcement of the award (arts. 35 and 36). Against

[3] Ibid., paras. 107-109.

that background, the Commission may wish to request the Secretariat to analyse the cases interpreting uniform provisions of the Model Law and to submit a digest of those cases to a future session of the Commission or its Working Group on Arbitration so as to enable the Commission to decide whether any action, similar to that suggested above with respect to the United Nations Sales Convention, should be taken.

6. The sample summaries of case law on articles 6 and 78 of the Convention are as follows:

Article 6

> The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

Introduction

1. According to article 6 of the Convention, the parties may exclude the Convention's application (totally or partially) or derogate from its provisions. Therefore, even if the Convention is otherwise applicable, one must nevertheless determine whether the parties have excluded it or derogated from its provisions in order to conclude that the Convention applies in a particular case.[4]

2. By allowing the parties to exclude the Convention and derogate from its provisions, the drafters affirmed the principle according to which the primary source of the rules governing international sales contracts is party autonomy.[5] In doing so, the drafters clearly acknowledged the Convention's non-mandatory nature[6] and the central role that party autonomy plays in international commerce and, in particular, in international sales.[7]

Derogation

3. Article 6 makes a distinction between the exclusion of the application of the Convention and the derogation from some of its provisions. Whereas the former does not encounter any limitations, the latter does. Where one of the parties to the contract for the international sale of goods has its place of business in a State that has made a

[4] See CLOUT case No. 378, Italy, 2000; CLOUT case No. 338, Germany, 1998; CLOUT case No. 223, France, 1997; CLOUT case No. 230, Germany, 1997; CLOUT Case No. 190, Austria, 1997; CLOUT case No. 311, Germany, 1997; CLOUT case No. 211, Switzerland, 1996; CLOUT case No. 170, Germany, 1995; CLOUT case No. 106, Austria, 1994; CLOUT case No. 199, Switzerland, 1994; CLOUT case No. 317, Germany, 1992.

[5] For a reference to this principle, see CLOUT case No. 229, Germany, 1996.

[6] For an express reference to the Convention's non-mandatory nature, see Oberster Gerichtshof, Austria, 21 March 2000, *Internationales Handelsrecht*, 2001, p. 41; CLOUT case No. 240, Austria, 1998.

[7] Landgericht Stendal, Germany, 12 October 2000, *Internationales Handelsrecht*, 2001, p. 32.

reservation under article 96,[8] the parties may not derogate from or vary the effect of article 12. In those cases, any provision "that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply" (art. 12). All other provisions may be derogated from.[9]

4. Although the Convention does not expressly mention it, there are other provisions that the parties cannot derogate from, more specifically, the public international law provisions (i.e. arts. 89-101). This is due to the fact that those provisions address issues relevant to contracting States rather than private parties. It should be noted that this issue has not yet been addressed by case law.

Express exclusion

5. The applicability of the Convention can be expressly excluded by the parties. In respect of this kind of exclusion, two lines of cases have to be distinguished: the exclusion with and the exclusion without any indication by the parties of the law applicable to the contract between the parties. In those cases in which the Convention's application is excluded with an indication of the applicable law, which in some countries can be made in the course of the legal proceedings,[10] the law applicable will be that applicable by virtue of the rules of private international law of the forum,[11] which in most countries makes applicable the law chosen by the parties.[12] Where the Convention is expressly excluded without an indication of the applicable law, the applicable law is to be identified by means of the private international law rules of the forum. Whenever these

[8] See article 96: "A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State."

[9] Thus, it cannot surprise that a court has recently stated that article 55, relating to open-price contracts, is only applicable where the parties have not agreed to the contrary (CLOUT case No. 151, France, 1995). Neither is a court decision surprising which expressly states that article 39, relating to the notice requirement, is not mandatory and can be derogated from (Landgericht Gießen, Germany, 5 July 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, p. 438). To take another example, according to the Austrian Supreme Court, article 57 also can be derogated from (CLOUT case No. 106, Austria, 1994).

[10] This is true for instance in Germany, as pointed out in case law; see, for example, CLOUT case No. 122, Germany, 1994; CLOUT case No. 292, Germany, 1993.

[11] See CLOUT case No. 231, Germany, 1997; Oberlandesgericht Frankfurt, Germany, 15 March 1996, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1997, pp. 170 ff.

[12] Where the rules of private international law of the forum are those laid down either in the 1955 Hague Convention on the Law Applicable to International Sales of Goods (United Nations publication, Sales No. 73.V.3), in the 1980 Rome Convention on the Law Applicable to Contractual Obligations (United Nations, *Treaty Series*, vol. 1605, No. 28023), or in the 1994 Inter-American Convention on the Law Applicable to Contractual Obligations, the law chosen by the parties will govern.

rules refer to the law of a contracting State, it appears that the domestic sales law and not the Convention should apply.

Implicit exclusion

6. A number of courts have considered the question of whether the Convention's applicability can be excluded implicitly. According to many courts,[13] the lack of an express reference to the possibility of implicitly excluding the Convention does not preclude it. This view is supported by a reference in the *Official Records*, which shows that the majority of delegations was opposed to the proposal advanced during the diplomatic conference according to which a total or partial exclusion of the Convention could only be made "expressly".[14] The express reference in the Convention to the possibility of an implicit exclusion merely "has been eliminated lest the special reference to 'implied' exclusion might encourage courts to conclude, on insufficient grounds, that the Convention had been wholly excluded".[15] According to few court decisions, however, the Convention cannot be excluded implicitly, on the grounds that the Convention does not expressly provide for that possibility.[16]

7. A variety of ways of implicitly excluding the Convention have been suggested. One possibility is for the parties to choose the law[17] of a non-contracting State as the law applicable to their contract.[18]

8. The choice of the law of a contracting State as the law governing the contract poses more difficult problems. It has been suggested in an arbitral award[19] and several court decisions[20] that the choice of the law of a contracting State ought to amount to an implicit exclusion of the Convention's application, since otherwise the choice of the parties would have no practical meaning. Most court decisions[21] and arbitral awards,[22]

[13] See CLOUT case No. 378, Italy, 2000; CLOUT case No. 273, Germany, 1997; Landgericht München, Germany, 29 May 1995, *Neue Juristische Wochenschrift*, 1996, pp. 401 f.; CLOUT case No. 136, Germany, 1995.

[14] *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.81.IV.3), pp. 85-86.

[15] Ibid., p. 17.

[16] See Landgericht Landshut, Germany, 5 April 1995, published on the Internet at: http://www.jura.uni-freiburg.de/iprl/Convention/; *Orbisphere Corp. v. United States*, United States of America, 726 Fed. Supp. 1344 (1990).

[17] Whether such a choice is to be acknowledged at all depends on the rules of private international law of the forum.

[18] See CLOUT case No. 49, Germany, 1993.

[19] See CLOUT case No. 92, Arbitration, 1994.

[20] See Cour d'Appel Colmar, France, 26 September 1995, published on the Internet at: http://witz.jura.uni-sb.de/cisg/decisions/260995.htm; CLOUT case No. 326, Switzerland, 1995; CLOUT case No. 54, Italy, 1993.

[21] CLOUT case No. 270, Germany, 1998; CLOUT case No. 297, Germany, 1998; CLOUT case No. 220, Germany, 1997; CLOUT case No. 236, Germany, 1997; CLOUT case No. 287, Germany, 1997; CLOUT case No. 230, Germany, 1997; CLOUT case No. 214, Germany, 1997; CLOUT case No. 206, France, 1996; Landgericht Kassel, Germany, 15 February 1996, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1996, pp. 1146 f.; CLOUT case No. 125, Germany, 1995; Rechtbank s'Gravenhage, the Netherlands, 7 June 1995, *Nederlands*

however, take a different view. The grounds for that view may be summarized as follows: on the one hand, the Convention is part of the law of the contracting State chosen by the parties and, on the other, the choice of the law of the contracting State functions to identify the law by which the gaps in the Convention must be filled. According to this line of decisions, the choice of the law of a contracting State, if made without particular reference to the domestic law of that State, does not appear to exclude the Convention's applicability.

9. The choice of a forum may also lead to the implicit exclusion of the Convention's applicability. In those cases, however, where the forum chosen is located in a contracting State and there is evidence that the parties wanted to apply the law of the forum, two arbitral tribunals have applied the Convention.[23]

10. The question has arisen of whether the Convention's application is also excluded where the parties argue a case on the sole basis of a domestic law despite the fact that all of the Convention's criteria of applicability are met. In those countries where the judge must always apply the correct law even if the parties based their arguments on a law that does not apply in the case (*jura novit curia*), the mere fact that the parties argue on the sole basis of a domestic law does not in itself lead to the exclusion of the Convention.[24] If the parties are not aware of the Convention's applicability and argue on the basis of a domestic law merely because they believe that this law is applicable, the judges will nevertheless have to apply the Convention.[25] In one country where the principle *jura novit curia* is not acknowledged, when the parties argued their case by reference to a domestic law of sales, a court applied that domestic law.[26]

Opting in

11. While the Convention expressly provides the parties with the possibility of excluding its application either in whole or in part, it does not address the issue of whether the parties may make the Convention

Internationaal Privaatrecht, 1995, No. 524; CLOUT case No. 167, Germany, 1995; CLOUT case No. 120, Germany, 1994; CLOUT case No. 281, Germany, 1993; CLOUT case No. 48, Germany, 1993.

[23] See CLOUT case No. 166, Arbitration; Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November, UNILEX; ICC International Court of Arbitration, France, award No. 8324, *Journal du droit international*, 1996, pp. 1019 ff.; ICC International Court of Arbitration, France, award No. 7844, UNILEX; ICC International Court of Arbitration, France, award No. 7660, UNILEX; ICC International Court of Arbitration, France, award No. 7565, *Journal du droit international*, 1995, pp. 1015 ff.; CLOUT case No. 103, Arbitration; CLOUT case No. 93, Arbitration.

[24] Schiedsgericht der Hamburger freundlichen Arbitrage, Germany, 29 December 1998, *Internationales Handelsrecht*, 2001, pp. 36-37; CLOUT case No. 166, Arbitration.

[25] See CLOUT case No. 378, Italy, 2000; CLOUT case No. 125, Germany, 1995; Landgericht Landshut, Germany, 5 April 1995, UNILEX.

[26] CLOUT case No. 136, Germany, 1995.

[27] *GPL Treatment Ltd. v. Louisiana-Pacific Group*, United States of America, 133 Or. App. 633 (1995).

applicable when it would not otherwise apply. This issue was expressly dealt with by the 1964 Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, which contained a provision, article 4, that expressly provided the parties with the possibility of "opting in". The fact that the Convention does not contain a provision comparable to that article does not necessarily mean that the parties are not allowed to "opt in". This view is also supported by the fact that a proposal made during the diplomatic conference (by the former German Democratic Republic)[27] according to which the Convention should apply even where the preconditions for its application are not met, as long as the parties wanted it to be applicable, was rejected on the ground that, to allow the parties to "opt in", an express provision was unnecessary, because of the existence of the principle of the party autonomy.

Article 78

> If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Prerequisites for entitlement to interest

1. This provision deals with the right to interest on "the price or any other sum that is in arrears", with the exception of the instance where the seller has to refund the purchase price after the contract has been avoided, in which case article 84 of the Convention applies.

2. The only prerequisite for the entitlement to interest is the debtor's failure to comply with its obligation to pay the price or any other sum by the time specified in the contract or, absent such specification, by the Convention.[28] Thus, unlike under many national laws, the entitlement to interest does not depend on any formal notice given to the debtor.[29] Therefore, interest starts to accrue as soon as the debtor is in arrears.

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[27] See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.81.IV.3), p. 86.

[28] For cases where the courts had to resort to the rules of the Convention, namely, article 58, to determine when the payment was due, since the parties had not agreed upon a specific time of performance, see CLOUT case No. 79, Germany, 1994; CLOUT case No. 1, Germany, 1991.

[29] For this statement in case law, see Landgericht Aachen, Germany, 20 July 1995, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; ICC International Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, pp. 1015 ff.; CLOUT case No. 166, Arbitration; CLOUT case No. 152, France, 1995; ICC International Court of Arbitration, France, award No. 7331, *Journal du droit international*, 1995, pp. 1001 ff.; Amtsgericht Nordhorn, Germany, 14 June 1994, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; CLOUT case No. 55, Switzerland, 1991; for a court decision stating the contrary, see Landgericht Zwickau, Germany, 19 March 1999, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/.

3. The entitlement to interest also does not depend on the creditor being able to prove to have suffered any loss. Therefore, interest can be claimed pursuant to article 78 independently from the damage caused by the payment in arrears.[30]

4. As can be derived from the text of article 78, the entitlement to interest on sums in arrears is without prejudice to any claim by the creditor for damages recoverable under article 74.[31] Of course, in order for this claim for damages to be successful, all requirements set forth in article 74 must be met.[32]

Interest rate

5. This provision merely sets forth a general entitlement to interest;[33] it does not specify the interest rate to be applied.

6. The lack of a specific formula to calculate the rate of interest has led some courts to consider this matter as one governed by, albeit not expressly settled in, the Convention.[34] Other courts consider this matter one that is not governed at all by the Convention. This difference in qualifying this matter has led to diverging solutions as to the applicable interest rate, since under the Convention, the matters governed by, but not expressly settled in, the Convention have to be dealt with differently than those falling outside the Convention's scope. According to article 7, paragraph 2, of the Convention, the former matters have to be settled in conformity with the general principles on which the Convention is based or, in the absence of those principles, in conformity with the law applicable by virtue of the rules of private international law. However, if a matter is considered to fall outside the Convention's scope, it must be settled in conformity with the law applicable by virtue of the rules of private international law, without any recourse to the "general principles" of the Convention.

7. Several decisions have sought a solution on the basis of general principles on which the Convention is based. Some court decisions[35]

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[30] See CLOUT case No. 79, Germany, 1994; CLOUT case No. 5, Germany, 1990; CLOUT case No. 7, Germany, 1990.

[31] This has often been emphasized in case law; see, e.g., CLOUT case No. 248, Switzerland, 1998; CLOUT case No. 195, Switzerland, 1995; CLOUT case No. 79, Germany, 1994; CLOUT case No. 130, Germany, 1994; CLOUT case No. 281, Germany, 1993; CLOUT case No. 104, Arbitration; CLOUT case No. 7, Germany, 1990.

[32] See Landgericht Oldenburg, Germany, 9 November 1994, *Recht der internationalen Wirtschaft*, 1996, pp. 65 f., where the creditor's claim for damages caused by the failure to pay was dismissed on the grounds that the creditor did not prove that it had suffered any additional loss.

[33] See ICC International Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, pp. 1015 ff.; CLOUT case No. 83, Germany, 1994; CLOUT case No. 79, Germany, 1994; Oberlandesgericht Koblenz, Germany, 17 September 1993, *Recht der internationalen Wirtschaft*, 1993, p. 938; CLOUT case No. 1, Germany, 1991.

[34] For a case listing various criteria used in case law to determine the rate of interest, see ICC International Court of Arbitration, France, award No. 7585, *Journal du droit international*, 1995, pp. 1015 ff.

[35] See Juzgado Nacional de Primera Instancia en lo Comercial n. 10, Buenos Aires, Argentina,

invoked article 9 of the Convention in order to solve the issue of the applicable rates of interest and determined the amount of interest payable according to the relevant trade usages. According to two arbitral awards[36] "the applicable interest rate is to be determined autonomously on the basis of the general principles underlying the Convention", on the grounds that the recourse to domestic law would lead to results contrary to those promoted by the Convention. In these two cases, the issue of the interest rate was solved by resorting to the general principle of full compensation, which led to the application of the law of the creditor, since it is the creditor who has to borrow money in order to be as liquid as it would be had the debtor paid the sum it owed in due time.[37] This solution has been criticized by commentators on the grounds that it contrasts with the legislative history of the Convention, since during the diplomatic conference a proposal to link the rate of interest to the law where the creditor had its place of business was unsuccessful.[38] Furthermore this solution appears not to take into account the line that article 78 expressly draws between the damages to be awarded on the basis of articles 74-77 and interest on sums in arrears, a line acknowledged by many other tribunals.[39]

8. Most courts consider the issue at hand as one not governed at all by the Convention and therefore tend to apply domestic law.[40] In respect of this approach some courts applied the domestic law of a specific country by virtue of the rules of private international law of the forum[41] and others

6 October 1994, UNILEX; Juzgado Nacional de Primera Instancia en lo Comercial n. 10, Buenos Aires, Argentina, 23 October 1991, UNILEX.

[36] See CLOUT cases Nos. 93 and 94, Arbitration.

[37] For a similar solution, that is, for an arbitral award basing its decision on the argument that the interest rate of the country has to apply in which the damage occurred, that is the country in which the creditor has its place of business, see also ICC International Court of Arbitration, France, award No. 7331, *Journal du droit international*, 1995, pp. 1001 ff.

[38] See *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.81.IV.3), pp. 137-138.

[39] For decisions which expressly refer to the distinction drawn between the interests which can be claimed on the basis of article 78 and the damages which can be claimed on the basis of articles 74-77, see CLOUT case No. 195, Switzerland, 1995; Landgericht München, Germany, 29 May 1995, *Neue Juristische Wochenschrift*, 1996, pp. 401 ff.; CLOUT case No. 79, Germany, 1994; CLOUT case No. 5, Germany, 1990; CLOUT case No. 46, Germany, 1990.

[40] Note that some courts did not decide which law was applicable; this was possible, since all the countries involved in the particular dispute provided for either the same rate of interest (see, for example, CLOUT case No. 84, Germany, 1994; CLOUT case No. 56, Switzerland, 1992) or an interest rate higher than the one claimed by the plaintiff (see Oberlandesgericht Dresden, Germany, 27 December 1999, *Transportrecht-Internationales Handelsrecht*, 2000, pp. 20 ff.)

[41] See Landgericht Stendal, Germany, 12 October 2000, *Internationales Handelsrecht*, 2001, p. 31; Oberlandesgericht Stuttgart, Germany, 28 February 2000, *OLG-Report Stuttgart*, 2000, 407 f.; CLOUT case No. 380, Italy, 1999; CLOUT case No. 327, Switzerland, 1999; CLOUT case No. 377, Germany, 1999; CLOUT case No. 248, Switzerland, 1998; CLOUT case No. 282, Germany, 1997; ICC International Court of Arbitration, France, award No. 8611, UNILEX (stating that the relevant interest rate is either that of the *lex contractus* or, in exceptional cases, that of the *lex monetae*); CLOUT case No. 376, Germany, 1996; Tribunal de la Glane, Switzerland, 20 May 1996, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, p. 136; CLOUT case No. 166, Arbitration; Appelationsgericht Tessin, Switzerland,

applied the domestic law of the creditor without it being necessarily the law made applicable by the rules of private international law.[42] There also are a few cases in which the rate was determined by reference to the law of the country in whose legal tender the sum of money has to be paid was (*lex monetae*);[43] in a few other cases, the courts applied the rate of the country in which the price had to be paid.[44]

9. A few courts resorted to the interest rate specified by the UNIDROIT Principles of International Commercial Contracts (art. 7.4.9),[45] as they

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12 February 1996, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1996, p. 125; Amtsgericht Augsburg, Germany, 29 January 1996, UNILEX; CLOUT case No. 330, Switzerland, 1995; Amtsgericht Kehl, Germany, 6 October 1995, *Recht der internationalen Wirtschaft*, 1996, pp. 957 f.; CLOUT case No. 195, Switzerland, 1995; CLOUT case No. 228, Germany, 1995; Landgericht Aachen, Germany, 20 July 1995, UNILEX; Landgericht Kassel, Germany, 22 June 1995, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; CLOUT case No. 136, Germany, 1995; Amtsgericht Alsfeld, Germany, 12 May 1995, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1996, pp. 120 f.; Landgericht Landshut, Germany, 5 April 1995, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; Landgericht München, Germany, 20 March 1995, *Praxis des internationalen Privat- und Verfahrensrechts*, 1996, pp. 31 ff., Landgericht Oldenburg, Germany, 15 February 1995, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; CLOUT case No. 132, Germany, 1995; CLOUT case No. 300, Arbitration; Kantonsgericht Zug, Switzerland, 15 December 1994, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, p. 134; Landgericht Oldenburg, Germany, 9 November 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, p. 438; Kantonsgericht Zug, Switzerland, 1 September 1994, *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, pp. 134 f.; Landgericht Düsseldorf, Germany, 25 August 1994, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; Landgericht Gießen, Germany, 5 July 1994, *Neue Juristische Wochenschrift Rechtsprechungs-Report*, 1995, pp. 438 f.; Rechtbank Amsterdam, the Netherlands, 15 June 1994, *Nederlands Internationaal Privaatrecht*, 1995, pp. 194 f.; Amtsgericht Nordhorn, Germany, 14 June 1994, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; CLOUT case No. 83, Germany, 1994; CLOUT case No. 82, Germany, 1994; CLOUT case No. 81, Germany, 1994; CLOUT case No. 80, Germany, 1994; CLOUT case No. 79, Germany, 1994; CLOUT case No. 100, the Netherlands, 1993; Tribunal Cantonal Vaud, Switzerland, 6 December 1993, UNILEX; CLOUT case No. 281, Germany, 1993; CLOUT case No. 97, Switzerland, 1993; Rechtbank Roermond, the Netherlands, 6 May 1993, UNILEX; Landgericht Verden, Germany, 8 February 1993, UNILEX; CLOUT case No. 95, Switzerland, 1992; Amtsgericht Zweibrücken, Germany, 14 October 1992, published on the Internet at http://www.jura.uni-freiburg.de/ipr1/Convention/; CLOUT case No. 227, Germany, 1992; Landgericht Heidelberg, Germany, 3 July 1992, UNILEX; CLOUT case No. 55, Switzerland, 1991; CLOUT case No. 1, Germany, 1991; CLOUT case No. 5, Germany, 1990; CLOUT case No. 7, Germany, 1990.

[42] Several court decisions referred to the domestic law of the creditor as the law applicable, independently of whether the rules of private international law made that law applicable; see Bezirksgericht Arbon, Switzerland, 9 December 1994, UNILEX; CLOUT case No. 6, Gemany, 1991; CLOUT case No. 4, Germany, 1989. For a criticism of the latter decision by a court, see Landgericht Kassel, Germany, 22 June 1995, UNILEX.

[43] See CLOUT case No. 164, Arbitration; Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November 1995, UNILEX.

[44] See Rechtbank Almelo, the Netherlands, 9 August 1995, *Nederlands Internationaal Privaatrecht*, 1995, p. 686.

[45] See ICC International Court of Arbitration, France, award No. 8128, *Journal du droit international*, 1996, pp. 1024 ff. For a case where the London interbank offered rate (LIBOR) was applied, see CLOUT case No. 103, Arbitration; note that this arbitral award was later annulled on the grounds that international trade usages do not provide appropriate rules to

considered these Principles as laying down general principles upon which the Convention was based.[46]

10. Despite the variety of solutions mentioned above, there is a clear tendency to apply the rate provided for by the law applicable to the contract,[47] that is, the law that would be applicable to the sales contract if it were not subject to the Convention.[48]

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determine the applicable interest rate; see Cour d'appel de Paris, France, 6 April 1995, *Journal du droit international*, 1995, pp. 971 ff.

[46] See article 7(2) of the Convention: "Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."

[47] Some courts referred to this solution as a unanimous one; see CLOUT case No. 132, Germany, 1995; CLOUT case No. 97, Switzerland, 1993. In the light of the remarks in the text, it is apparent that, although this solution is the prevailing one, it has not been unanimously accepted.

[48] For case law stating the same, see Landgericht Aachen, Germany, 20 July 1995, UNILEX; Amtsgericht Riedlingen, Germany, 21 October 1994, UNILEX; Amtsgericht Nordhorn, Germany, 14 June 1994, UNILEX.